

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

VC MACON GA LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
VIRGINIA COLLEGE LLC and	)	Civil Action No.: 5:18-cv-00388-TES
EDUCATION CORPORATION OF	)	
AMERICA,	)	
	)	
Defendants.	)	

**JOINDER OF CMS EDU II SPARTANBURG, L.P. AND CMS EDU II  
HUNTSVILLE, L.P. IN THE: (1) MOTION OF NATIONAL RETAIL  
PROPERTIES, LP, VALLEY PLAZA MALL, LP, CHULA VISTA CENTER,  
LLC, AND PIERRE BOSSIER ANCHOR ACQUISITION, LLC TO VACATE  
THE INJUNCTION AND RECEIVERSHIP ORDER OR, IN THE  
ALTERNATIVE, TO MODIFY THE SCOPE OF THE RECEIVERSHIP ORDER  
AND INJUNCTION; AND (2) MOTION OF THIRD PARTIES THOMAS D.  
GORDON AND THOMAS P. GALLAGHER, AS CO-TRUSTEES FOR THE DON  
LEVIN TRUST DATED AUGUST 30, 1991, AS AMENDED, TO VACATE  
PRELIMINARY INJUNCTION AND RECEIVERSHIP ORDER**

CMS EDU II Spartanburg, L.P. (“CMS Spartanburg”) and CMS EDU II Huntsville, L.P. (“CMS Huntsville”) (collectively, the “CMS Landlords”) hereby join in: (1) the Motion to Vacate the Injunction and Receivership Order, or, in the alternative, to Modify the Scope of the Receivership Order and Injunction (Dkt No. 45); and (2) the Motion to Vacate Preliminary Injunction and Receivership Order (Dkt. No. 62) (collectively, the “Motions to Vacate”). The CMS Landlords are similarly situated to the parties that filed the Motions to Vacate and their rights and interests have likewise been adversely impacted by the Court’s November 14, 2018 Order (the “Order”) (Dkt. No.

26). For the reasons set forth herein and in the Motions to Vacate, which are incorporated herein, the CMS Landlords respectfully request the Court vacate the Order.

### **STATEMENT OF FACTS**

The CMS Landlords have out-of-state leases with tenant Virginia College LLC (“Virginia College”) and guarantor Education Corporation of America (“ECA”) (collectively, the “Defendants”). The Defendants are in default under both leases.

On September 20, 2018, CMS EDU II Spartanburg, L.P. filed a complaint in the Circuit Court of Spartanburg County, South Carolina against Virginia College and ECA, Civil Action Number 2018-CP-3268 (the “Spartanburg Lawsuit”). In the Spartanburg Lawsuit, CMS Spartanburg seeks unpaid rent and accelerated rent from the Defendants. The Spartanburg Lawsuit remains pending in state court, but has been stayed subject to this Court’s Order.

On October 10, 2018, CMS Huntsville filed a complaint in the Circuit Court of Madison County, Alabama against Virginia College and ECA, Civil Action Number 47-CV-2018-901955 (the “Huntsville Lawsuit”). CMS Huntsville’s complaint includes two counts: (1) breach of contract against Virginia College related to a commercial lease (“Lease”); and (2) breach of contract against ECA concerning a guaranty related to the Lease from ECA in favor of CMS Huntsville. The CMS Huntsville Lawsuit was filed after CMS Huntsville terminated the Lease when Virginia College and ECA failed to pay rent for three months. The Huntsville Lawsuit remains pending in state court, but has been stayed subject to this Court’s Order.

The CMS Landlords hereby incorporate the recitation of facts in the Motions to Vacate concerning: the Defendants default under numerous leases across the county; the Northern District of Alabama case and disposition thereof (*Education Corporation of America, et al. v. United States Department of Education, et al.*, N.D. Ala. No. 18-cv-01698-AKK); the appointment of the Receiver and entry of injunction in the instant case.

### **ARGUMENTS**

The CMS Landlords hereby join in and incorporate the arguments set forth in the Motions to Vacate, including, but not limited to: (1) this Court lacks jurisdiction in this matter as to the CMS Landlords; (2) this Court lacked the authority to appoint a receiver; and (3) the injunction should not apply to the CMS Landlords and their respective state court cases.

### **CONCLUSION**

WHEREFORE, for the aforementioned reasons, which are set forth in greater detail in the Motions to Vacate and incorporated herein, the CMS Landlords respectfully request that this Court enter an Order granting either or both Motions to Vacate, thereby vacating the receivership order and injunction as they relate to the CMS Landlords.

Dated this 7th day of December, 2018.

[SIGNATURES ON THE FOLLOWING PAGE]

Respectfully submitted,

s/ Michael J. Thomerson

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EDUCATION CORPORATION OF	)	
AMERICA,	)	
	)	
Defendants.	)	

**CERTIFICATE OF SERVICE**

I hereby certify that the following parties have been served with the Entry of Appearance. Those not served by electronic means by the Court's electronic filing system have been served via first class U.S. Mail, proper postage prepaid:

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This 7th day of December, 2018.

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